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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Communications Assistance for )  
Law Enforcement Act )  
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CC Docket No. 97-213  
DA 98-762

COMMENTS OF  
OMNIPOINT COMMUNICATIONS, INC.

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, hereby submits its comments in response to the Commission's April 20, 1998 Public Notice in the above-captioned proceeding. Omnipoint and its affiliates are small business licensees operating broadband Personal Communications Services ("PCS") systems in the New York Major Trading Area and many other Basic Trading Areas, and hold PCS licenses to serve over 96.5 million people in the United States. According to U.S. Department of Justice statistics, Omnipoint's service areas include jurisdictions where very high volumes of wiretaps and other forms of electronic surveillance are conducted annually.

In earlier proceedings involving the Communications Assistance for Law Enforcement Act ("CALEA"), Omnipoint urged the Commission not to impose undue burdens and impractical procedures in prescribing rules to implement CALEA, and to use its authority under CALEA to issue blanket extensions of the Act's compliance deadlines until CALEA-compliant equipment is available from carriers' regular equipment vendors.

As described in greater detail below, Omnipoint in this proceeding again urges the Commission to use its authority under CALEA to extend the deadlines for compliance with

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CALEA's assistance capability requirements for broadband CMRS providers until two years after the dates that the final technical standards for such service equipment are promulgated.

## I. INTRODUCTION

The Commission in its Public Notice indicated that several parties had filed petitions to extend the compliance deadline for meeting the assistance capability requirements of Section 103 of CALEA. In this round of the current rulemaking, the Commission requests "specific comments on the issues raised concerning compliance with CALEA obligations, including any extension of the October 1998 compliance date."<sup>1</sup> Omnipoint, for the reasons described below, fully supports those petitioners who seek an extension of the compliance deadline.<sup>2</sup>

CALEA establishes a mechanism whereby the telecommunications industry can meet the government's capability and capacity requirements for electronic surveillance assistance. In enacting CALEA, Congress envisioned a cooperative process whereby industry standards-setting bodies, with the assistance of the Attorney General, would promulgate technical standards for CALEA-compliant equipment, and manufacturers would use these standards to provide telecommunications carriers with timely access to such equipment.<sup>3</sup> PCS providers would thus be able to incorporate CALEA-compliant equipment and software as they built out their networks and thereby avoid the cost of retrofitting their networks to meet the government's requirements.

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<sup>1</sup>Public Notice at 4.

<sup>2</sup>See Center for Democracy and Technology Petition at 5 (March 26, 1998); Telecommunications Industry Association Petition at 2 (April 2, 1998); AT&T Wireless Services, Inc., Lucent Technologies, Inc., and Ericsson, Inc. Petition at 2 (March 30, 1998).

<sup>3</sup>See 47 U.S.C. §§ 1003(a), 1005(a), 1006(a)(1).

This gradual and low-cost transition to CALEA-compliant networks has not taken place. However, due to the uncertainty<sup>4</sup> surrounding the interim standard, it may in fact be virtually impossible for carriers to build a CALEA-compliant network. Yet carriers may be subject to a fine of \$10,000 per switch for every day of non-compliance unless an extension is granted. Since it is generally accepted that it will take approximately two years from the date final standards are promulgated to the date CALEA-compliant solutions are commercially available, it is therefore vital that a final standard be established with all due speed and that an extension be granted.

Omnipoint recognizes its obligation to comply with CALEA's capability and capacity requirements. It cannot do so, however, until appropriate and final industry standards have been established. While an interim standard—J-STD-025—has been promulgated for the telecommunications industry, that standard is currently under attack as deficient by the Federal Bureau of Investigation and Department of Justice ("FBI/DOJ"), on the one hand, and by the Center for Democracy in Technology ("CDT"), on the other hand. In particular, the FBI/DOJ believes that the interim standard is deficient because it fails to contain the "punch list" features it has demanded.<sup>5</sup> Conversely, the CDT, as a representative of privacy interests, believes the interim standard is excessive in that it requires carriers to provide law enforcement officials with the location of mobile callers and with access to the full content of packet switched data.<sup>6</sup>

This lack of a final standard has made it technically impractical and financially imprudent for manufacturers to fully develop CALEA-compliant equipment, and equally imprudent for carriers to purchase, install, and test telecommunications equipment and software that might be

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<sup>4</sup>Due to the added uncertainty of how the Commission will interpret the cost-recovery language as it relates to equipment installed after January 1, 1995, some PCS carriers may not be able to recover any of the costs associated with complying with CALEA, contrary to Congress' intent in enacting cost recovery.

<sup>5</sup>FBI and DOJ Joint Petition, Appendix 1 (filed March 27, 1998).

<sup>6</sup>CDT Petition at 7.

rendered substandard as soon as final specifications are promulgated.<sup>7</sup> Therefore, the Commission should not require broadband PCS carriers to meet CALEA's assistance capability requirements until two years from the date of the Commission's final standards-setting decision for this service.<sup>8</sup>

Finally, the Commission should use its broad powers under CALEA and its "necessary and proper" authority under Section 4(i) of the Communications Act to extend the Section 103 compliance deadline on a blanket basis for all carriers. Such a comprehensive approach will conserve the Commission's resources, and will prevent every carrier in the United States from filing an individual extension request in order to protect itself from potential liability. In light of the imminence of the October 25, 1998 deadline, the Commission should grant this blanket extension as soon as possible.

## **II. THE COMMISSION SHOULD FOLLOW TIA'S RECOMMENDATIONS AND ALLOW BROADBAND PCS CARRIERS TWO YEARS FROM THE DATE STANDARDS ARE PROMULGATED TO COMPLY WITH CALEA'S ASSISTANCE CAPABILITY REQUIREMENTS**

In its Petition, TIA requested that the Commission extend the deadline for compliance with CALEA's assistance capability requirements for two years from the date the final equipment standards are promulgated.<sup>9</sup> TIA based its extension request on two facts: (1) it is unreasonable to expect manufacturers to design and build, and carriers to purchase and install, network solutions that are likely to become suddenly deficient when the interim standard J-STD-025 is altered; and (2) it will take the manufacturing community approximately two years from the date

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<sup>7</sup> See TIA Petition.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> TIA Petition at 13. As PCIA notes in its comments, TIA actually requested that compliance be "tolled" during the pendency of the standards-setting rulemaking and *then* that the two year extension take effect. Omnipoint joins PCIA in supporting the substance of this request.

standards are finalized to make CALEA-compliant equipment commercially available.

Omnipoint concurs with this analysis.

Omnipoint joins with TIA, PCIA, and others in requesting that the Commission extend the compliance deadline for meeting the assistance capability requirements for PCS providers to the date that is two years from the date the Commission's rules regarding final technical standards take effect. Such a compliance schedule will give manufacturers sufficient time to design, develop, and test CALEA-compliant broadband PCS equipment and software, and will give carriers sufficient, and needed, time to install, test, and deploy this equipment.

### **III. THE COMMISSION HAS THE AUTHORITY TO ISSUE A BLANKET EXTENSION, AND SHOULD DO SO AS QUICKLY AS POSSIBLE**

The Commission also sought comment on how it can "most quickly and efficiently" grant an extension of CALEA's compliance deadline. As PCIA set forth in its comments, there are three statutory avenues by which the Commission can extend the deadline for complying with the assistance capability requirements of Section 103 of the Communications Assistance for Law Enforcement Act ("CALEA"): Sections 107(b), 107(c)(1), and 109(b)(1). Section 107(c)(1) states that individual telecommunications carriers can file a petition with the Commission to grant an extension of the deadline for complying with the assistance capability requirements under section 103 of the Act, and Sections 107(b) and 109(b)(1) authorize "any person" or "interested person" to petition the Commission to 1) establish technical standards and 2) to determine that compliance with the assistance capability requirements are not "reasonably achievable" for equipment facilities and service deployed after January 1, 1995, respectively.<sup>10</sup>

In the interest of time, the Commission will surely want to avoid being deluged with a multitude of redundant requests for extensions filed by all carriers affected by the Act. Instead,

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<sup>10</sup> 47 U.S.C. § 1006(c)(1); 1006(b); 1006(b)(5) and 1008(b)(1).

the Commission may wish to consider petitions from a few trade associations that represent the interests of affected carriers, and the broad language of Sections 107(b) and 109(b)(1) of CALEA, combined with the Commission's "necessary and proper" authority under Section 4(i) of the Communications Act, give the Commission the necessary authority to grant an extension to all telecommunications carriers, on a blanket basis, without the necessity for individual carrier-by-carrier filings. Further, the public interest will plainly be served if the Commission uses this statutory authority to grant a blanket extension because the drafting, filing, and processing of individual extension requests for each carrier in the United States would represent an enormous waste of both Commission and carrier resources.

Whichever approach it chooses, the Commission should take swift and decisive action to issue an extension order. Trade associations for the affected segments of the telecommunications industry—including landline (USTA), PCS (PCIA), and cellular (CTIA)—have requested such relief, and the Commission has the authority to grant these requests. Further, at the end of the comment cycle, the Commission should have an ample factual record on which to base its decision. Any further delay by the Commission at this point can only result in a flood of extension requests filed by individual carriers that are attempting to protect their self-interest. In order to avoid such a result, the Commission should move ahead with all due speed.

#### **IV. CONCLUSION**

For the reasons set forth above, Omnipoint requests that the Commission extend the deadline for complying with the assistance capability requirements of CALEA until two years after the date final technical standards for PCS equipment are promulgated. Such Commission action is fully consistent with CALEA and the public interest, convenience, and necessity.

Respectfully submitted,

OMNIPOINT COMMUNICATIONS, INC.

By:

A handwritten signature in black ink, appearing to read 'Emilio W. Cividanes', with a long horizontal flourish extending to the right.

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